

194630US

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

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1-8-04
8/2

IN RE APPLICATION OF: :
TAKANOBU TAKEUCHI : GROUP ART UNIT: 2643
SERIAL NO.: 09/620,595 :
FILED: JULY 20, 2000 : EXAMINER: LAO, LUN S.
FOR: MICROPHONE UNIT

PROVISIONAL ELECTION

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

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SIR:

In response to the Restriction Requirement dated November 28, 2003, Applicant elects with traverse Group I, Claims 1-6, drawn to having an electrostatic capacitance element. Applicant makes this election based on the understanding that Applicant is not prejudiced against filing one or more divisional applications that cover the non-elected claims.

In addition to making this election, Applicant respectfully traverses this Restriction Requirement for the reason that the inventions of Groups I-II have not been shown to be distinct in the manner required by M.P.E.P. §806.05(d).

Concerning Groups I and II, M.P.E.P §806.05(d) requires that the Patent Office show that two or more subcombinations disclosed as usable together in a single combination are separately usable, in order for the claimed subcombinations to be distinct. Furthermore, M.P.E.P §806.05(d) requires that the examiner must show, by way of example, that one of the subcombinations has utility other than in the disclosed combination. Page 2 of the Restriction Requirement merely states that

...In the instant case, invention II has separate utility such as

vehicle/electromagnetic.

The Restriction Requirement fails to identify the “disclosed combination” or the “subcombinations” and therefore fails to show that two or more subcombinations disclosed as usable together in a single combination are separately usable. As such, there is no basis upon which Applicant can determine if the asserted subcombinations are indeed subcombinations usable together in a single combination, or if one of the asserted subcombinations has utility other than in a disclosed combination, as required in M.P.E.P §806.05(d).

Hence, the Restriction Requirement fails to show that the inventions in Groups I-II are distinct in the manner prescribed in M.P.E.P §806.05(d).

Furthermore, MPEP § 803 states:

If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.

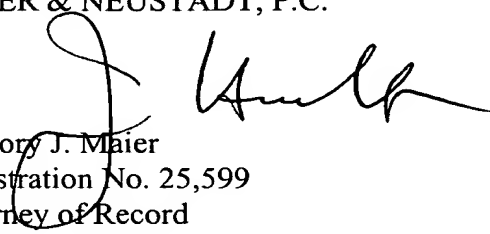
The claims of the present invention would appear to be part of an overlapping search area.

Accordingly, Applicant respectfully traverses the Restriction Requirement on the grounds that a search and examination of the entire application would not place a *serious* burden on the Examiner, whereas it would clearly be burdensome on Applicant to be required to file, prosecute and maintain separate applications and patents on the identified.

Accordingly, it is respectfully requested that the requirement to elect a single group be withdrawn, and that a full examination on the merits of Claims 1-15 be conducted.

Respectfully submitted,

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RE: U.S. Application
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Filed: JULY 20, 2000
Group: 2643
Inventor: TAKANOBU TAKEUCHI
For:MICROPHONE UNIT



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Attached hereto for filing are the following papers:

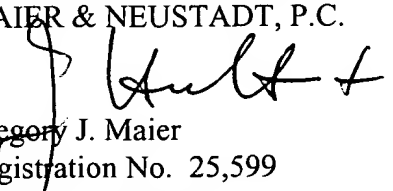
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Our check in the amount of \$--0-- is attached covering any required fees. In the event that any variance exists between the amount enclosed and the Patent Office charges for filing the above-noted documents, including any fees required under 37 CFR 1.136 for any necessary Extension of Time to make the filing of the attached documents timely, please charge or credit our Deposit Account No. 15-0030. Further, if these papers are not considered timely filed, then a petition is hereby made under 37 C.F.R. 1.136 for the necessary extension of time. A duplicate of this sheet is enclosed.

Respectfully submitted,

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